IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.476 OF 2005

M/s.Videocon International Ltd.,
and Ors. ...Petitioners.

Versus

S.K.Sinha & Anr. ...Respondents.

. . .

Mr.R.D.Soni, Advocate i/b M/s. Ram & Co., for the petitioners.
Mr.J.C.Satpute, Advocate for Respondent No.1.
Mr.I.S.Thakur, APP, for the State.

. . .

CORAM : D.G.DESHPANDE AND
SMT.V.K.TAHILRAMANI, JJ.
DATED : APRIL 26, 2006.

ORAL ORDER (PER SMT.TAHILRAMANI,J.)

. Heard Mr.Soni learned Advocate for the petitioners, Mr.Satpute, learned Advocate for respondent No.1-orig.complainant and Mr.Thakur, learned APP for the State.

2. The petitioners are mainly praying for quashing of Criminal Complaint No.1149/S/02 filed by respondent No.1 against them. The said complaint is pending in the Court of the Chief Metropolitan Magistrate, Esplanade, Mumbai. The said complaint is under Sections 18(2) & 18(3) of the Foreign Exchange Regulation Act, 1973

(hereinafter referred to as "FERA".)

3. Mr.Soni, the learned Advocate for the petitioners has submitted that though the complaint was filed in the year, 2002, process came to be issued against the petitioners by the learned Metropolitan Magistrate on 3.2.2003. Mr.Soni has submitted that FERA has been repealed by the Foreign Exchange Management Act, 1999 (hereinafter referred to as "FEMA").

. Mr.Soni submitted that in Sections 49(1) & 49(3) of FEMA, it is specifically provided that no cognizance can be taken of an offence two years after FEMA came into force. In such case, the complaint relating to the said case deserves to be quashed.

4. The relevant provisions of Section 49 read as under :

> **"49. Repeal and Saving.--**
>
> (1) The Foreign Exchange Regulation Act, 1973 (46 of 1973 is hereby repealed and the Appellate Board constituted under

> sub-section (1) of Section 52 of the said Act (hereinafter referred to as the repealed Act) shall stand dissolved.
>
> (2) .....
>
> (3) Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act and no adjudicating officer shall take notice of any contravention under section 51 of the repealed Act after the expiry of a period of two years from the date of the commencement of this Act. "

5. It is an admitted position that FEMA came into operation on 1.6.2000. In view of sub-Section (3) of Section 49 of FEMA, the period of two years would came to an end on 31.5.2002. Looking to the provisions of Section 49(3), no cognizance could have been taken by the learned Magistrate after 31.5.2002.

. In the present case, it is an admitted fact that the process came to be issued against the petitioners on 3.2.2003 i.e. much after 31.5.2002. In view of the various decisions of the Supreme Court and this Court, it is clear that issuance of process by a Court means the Court has taken cognizance of the offence. We may advert to

two such decisions of the Supreme Court i.e. in the case of **Krishna Pillai Vs. T.A.Rajendran and Anr.** reported in **1990(Supp) Supreme Court Cases 121**; and in the case of **A.R.Antulay Vs. Ramdas Sriniwas Nayak**, reported in **(1984)2 SCC 500**.

. In the case of **A.R.Antulay Vs. Ramdas Nayak**, the Supreme Court held that,

> " ...When it is said that court issued process, it means the court has taken cognizance of the offence and has decided to initiate the proceedings and a visible manifestation of taking cognizance process is issued which means that the accused is called upon to appear before the court."

6. The learned Advocate for respondent No.1-orig.complainant has submitted that limitation was applicable only for filing of the complaint and not for taking of cognizance. In support of his contention, he has placed reliance on the decision of the Apex Court in the case of **Bharat Damodar Kale & Anr. Vs. State of A.P.**

7. We have perused the said decision and we

find that it is not under FERA/FEMA. In FEMA there is a specific provision i.e. Section 49(3), which bars the Court from taking cognizance two years after the act came into force.

8. From the facts of the present case, it is clear that the learned Magistrate has taken cognizance of the offence on 3.2.2003. In view of Section 49(3) of FEMA, the learned Magistrate could not have taken cognizance after 31.5.2002 i.e. the learned Magistrate could not have issued process against the petitioners after 31.5.2002.

9. In this view of the matter, the process issued against the petitioners is quashed and set-aside. Consequently, the Criminal Complaint No.1149/S/2002 pending before the Chief Metropolitan Magistrate, Esplanade, Mumbai is also quashed and set-aside.

(D.G.DESHPANDE, J.)

(SMT.V.K.TAHILRAMANI,J.)